United Nations CED/C/SR.83

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
28 March 2014

Original: English

Committee on Enforced Disappearances

Sixth session

Summary record of the 83rd meeting

Held at the Palais Wilson, Geneva, on Thursday, 19 March 2014, at 10 a.m.

Chairperson: Ms. Janina

Contents

Consideration of reports of States parties to the Convention (*continued*)

Report of the Netherlands (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.5106, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.14-41892 (E) 270314 280314

1441892

Please recycle

Ms. Janina, Vice-Chairperson, took the Chair.

The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Report of the Netherlands (continued) (CED/C/NLD/1; CED/C/NLD/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the Netherlands took places at the Committee table.*

2. **Mr. Stevens** (Netherlands) said that his delegation would begin by replying to outstanding questions raised at the previous meeting. Commenting on the role of the Royal Netherlands Marechaussee, he said that it was the police force responsible for investigations into military cases and specific crimes related to border protection and migration issues, including human trafficking, drug smuggling and document fraud. It operated under the authority of the Public Prosecution Service. Military cases were entrusted to a designated prosecutor at the military chamber of the Arnhem District Court, which was a civilian court, while other cases were investigated by regular civilian prosecutors. The Royal Netherlands Marechaussee operated under the authority of the Ministry for Security and Justice and not the Ministry of Defence. The ordinary Criminal Code was applicable to military cases; a Military Criminal Code did exist in the Netherlands, but it applied exclusively to specific military crimes such as insubordination and desertion. The International Crimes Act was fully applicable to military crimes committed inside and outside the Netherlands.

3. Turning to the issue of mobile courts, he said that the Military Criminal Justice Act provided for their establishment in emergency cases in which justice could not be administered under normal circumstances – for instance, if the military chamber of the Arnhem District Court was no longer in operation. A mobile court would be composed of two civilian judges and one military judge. The applicable legislation would be the ordinary Criminal Code and the relevant provisions of the Military Criminal Code.

4. **Mr. Berger** (Netherlands) said that as part of its efforts to implement the Convention, the Netherlands had amended it national legislation to give effect to its provisions. The definition of enforced disappearance, already referred to as a crime against humanity in the International Crimes Act, had been reviewed and brought fully into line with that contained in article 2 of the Convention. Both instruments thus provided the same level of accountability for crimes of enforced disappearance, and the International Crimes Act further criminalized enforced disappearances perpetrated by or with the support of political organizations.

5. The question had also been raised as to whether protection would be provided not only to witnesses but also to their family members if the need arose. The protection of anyone involved in an investigation fell under the responsibility of the Public Prosecution Service and the witness protection programme in place in the Netherlands provided effective protection to witnesses and their families. However, when investigations were conducted outside the Netherlands, it was sometimes difficult to offer the same level of protection. While the Witness Protection Team cooperated with their counterparts in other countries, such mechanisms did not exist in all countries. In such cases, witnesses were asked to return to the Netherlands where they could be guaranteed protection, although that was often not feasible for the witnesses. Accordingly, the safety issues at stake were assessed throughout the proceedings. If a risk was posed to victims or their relatives and sufficient protection could not be guaranteed abroad, their safety had to be ensured in an alternative way – by not revealing their identity, for instance. If, however, the very nature of a witness statement would make it possible for the witness to be identified by the

perpetrator, the Public Prosecution Service had to determine whether it could ensure the protection of the witness who was abroad. Failing that, the only alternative was not to use the statement concerned, under the direction of the court.

6. **Mr. Yakushiji** noted that the Committee had not received information about the types of criminal responsibility under the Criminal Code that were applicable in the Caribbean part of the Netherlands.

7. He asked whether the laws regulating surrender or extradition provided for a stay of execution of a decision to surrender or extradite when a well-substantiated appeal had been presented against the impugned decision. He also wished to know whether any steps had been taken to ensure that a more substantive review of facts was carried out in the context of rejected asylum application appeals before the Council of State and asked for detailed information on those procedures, in particular with regard to the eight-day asylum procedure introduced in 2010. He asked what guarantees were available to ensure that refoulement was prevented. Taking into account that the legal advice entitlement of asylum seekers during the application procedure was limited to 12 hours, he wondered what steps had been taken to allow applicants to substantiate their case adequately.

8. On the subject of a mechanism to prevent unlawful detention and enforced disappearance, he requested details of the legal provisions requiring prompt notification of and access to family members or any other person of choice. Did persons in police custody have the right to meet with counsel during questioning, and did that entitlement apply from the outset of the detention? Was legal counselling available in Sint Eustatius and Saba? He wished to know whether the Netherlands had a regime of incommunicado detention and whether the 2008 Bill on Administrative Measures had been amended to eliminate exclusion orders based on a person's association with terrorist activities.

9. He wondered which elements set out in article 17, paragraph 3, of the Convention did not need to be included in official registers under the Code of Criminal Procedure, the Custodial Institutions Act, the Hospital Orders (Framework) Act and the Young Offenders Institutions (Framework) Act and in article 3 of the Regulations for Custodial Institutions of Bonaire, Sint Eustatius and Saba. Were the requirements set out in subparagraphs (b), (d), (f), (g) and (h) of article 17, paragraph 3, of the Convention mandatory for record-keeping in the State party, and were there methods of inspection to ensure that records were kept and updated in accordance with the provisions of the Convention? He also wished to know whether the failure of an official to record a deprivation of liberty or to knowingly record inaccurate information in the register was punishable under the General Civil Service Regulations.

10. **Mr. Decaux**, referring to the legal status of disappeared persons, asked whether the State party had considered applying a system that provided social entitlements for the relatives of the victim without presuming the death of the disappeared, taking into account the psychological impact of the disappearance on the relatives and continuous nature of the offence.

11. It appeared that the right of victims to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person was not systematically guaranteed. In the absence of that right, was there an obligation on the State to search for, locate and release disappeared persons and, in the case of death, locate, respect and return their mortal remains to relatives?

12. He wished to know whether the Criminal Injuries Compensation Fund was the competent body to pay compensation to victims of enforced disappearance committed in the territory of the Netherlands even when it had not been established that the disappeared person had died. He sought clarification of the procedure that would apply to victims and wondered whether only the offender was liable to pay compensation to the victims, even if

it was established that the disappearance had been committed, authorized, supported or acquiesced to by a State agent. If so, what legal provisions regulated the procedure and what reparation would the victims obtain? Could compensation be claimed irrespective of criminal proceedings? He wished to know whether there was a time limit within which victims of enforced disappearance could apply for reparation and what body was responsible for paying compensation to victims of enforced disappearance committed in the Caribbean part of the Netherlands. Lastly, he sought information on the restitution of the remains of victims and wondered whether rehabilitation, satisfaction and non-repetition would be guaranteed in the State party.

13. **Mr. Camara**, recalling that under the Convention any person deprived of liberty must be authorized to communicate with and be visited by family members, counsel or any other person of their choice, asked whether national legislation provided for exceptional restrictions to the right to receive such visits.

14. **Mr. Corcuera Cabezut** said that it was very difficult for family members of disappeared persons to formally request a declaration of death for their loved ones. Mindful of the victim's right to continue to be recognized as a person before the law, they preferred the concept of "presumption of life" rather than of death. As a result, the rights of family members under article 24, paragraph 6, of the Convention were often not guaranteed. It was important to consider ways of addressing that problem, as had been done in Argentina and Colombia, where the legislation provided for a declaration of absence as a result of enforced disappearance.

15. **Mr. Garcé García y Santos** wished to know whether the State party had taken measures to ensure the complete financial and operational independence of the various directorates that composed the national preventive mechanism, and whether a budget was allocated to the mechanism by law. Did all the components of the national preventive mechanism have unrestricted access to all places of detention? He would appreciate more information on the mandate of the National Ombudsman with regard to enforced disappearances. He asked the delegation to describe the preventive mechanisms in place in Aruba, Curaçao and Sint Maarten, and whether there was effective coordination between all the components of those mechanisms.

16. **Mr. Hazan**, referring to cases of illegal adoption in the State party, asked whether there was a procedure in place to review and annul adoptions that had resulted from an enforced disappearance. Could the delegation comment on reports of girl victims of enforced disappearance who had been transferred to the State party from El Salvador and whether any citizens of the Netherlands had been prosecuted in that regard?

17. **Mr. Huhle** noted that it was important to achieve a balance between the right to the protection of individual data and the right to access to information of persons having a legitimate interest in detention cases. It had nevertheless emerged that national law in the Netherlands did not guarantee relatives the right to access the information described in article 18, paragraph 1, of the Convention. He therefore asked the State party to clarify its restrictive interpretation of "persons with a legitimate interest". Could the delegation also explain whether such persons had a right to appeal a refusal to disclose the information requested?

18. **Mr. López Ortega** asked whether a separate report to the Committee would be submitted by the State party's overseas territories when they ratified the Convention, given that the information covered in the report of the Netherlands did not apply to the islands with a different legal system in place. He asked whether Dutch legislation provided for the use of anonymous witness statements in proceedings, whether such statements could be used in cases of enforced disappearances, and how legislation provided for the protection of witnesses and accused persons. While the Committee's main concern was for persons

deprived of liberty in detention and penitentiary centres, the situation of persons interned in psychiatric institutions was also of interest. Information would therefore be appreciated on measures to ensure effective monitoring of psychiatric institutions, including inspections by the judicial authorities and the maintenance of registers of interned persons.

19. **Mr. Al-Obaidi** asked whether training on the Convention was provided to the persons listed in article 23.

The meeting was suspended at 10.55 a.m. and resumed at 11.30 a.m.

20. **Mr. Stèvens** (Netherlands) said that, unlike the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba), where the laws governing international crimes were identical to those in the European part of the Netherlands, the islands of Aruba, Curaçao and Sint Maarten constituted independent countries within the Kingdom of the Netherlands with independent legal orders. They would therefore submit separate reports to the Committee, including information on the operation of their national preventive mechanisms, in accordance with article 29. It was expected that they would ratify the Convention within two or three years.

21. Dutch legislation provided for a stay of execution in cases where an appeal was made against a decision on surrender or extradition. In addition, the European Convention on Human Rights, which the Netherlands had signed, prohibited extradition if a person was at risk of enforced disappearance. The country's asylum procedure had been reformed in 2010: it now consisted of a six-day period during which applicants had access to legal aid to prepare for the review of their cases, followed by an eight-day assessment of the asylum application. Where unresolved issues remained, the procedure could be extended to allow for a fuller investigation. Asylum was granted in around half of all cases, and asylum seekers whose applications were rejected could appeal to the district courts and subsequently to the Council of State, which reviewed the admissibility of the decision. The forthcoming implementation of the directive of the European Parliament and European Council on common procedures for granting and withdrawing international protection would entail a reform of the asylum review procedure and render it more comprehensive.

22. Persons held in detention had full access to legal counsel and could receive weekly visits from family members lasting one hour. Restrictions on visits applied where there was a risk to public and national security or to the safety of other persons involved in the case. Official registers of persons deprived of their liberty contained the information stipulated in article 17, paragraph 3, of the Convention. The information specified in article 17, paragraphs 3 (b) and (g), was kept in the penitentiary files and the information relating to detainees' state of health, required under article 17, paragraph 3 (f), was registered with the prison medical services. The Security and Justice Inspectorate was the authority responsible for supervising situations of deprivation of liberty. Under the Code of Criminal Procedure, penitentiary institutions were required to register all detained persons, and the General Civil Service Regulations set out sanctions for inaccurate registration by personnel working in a custodial institution. Lastly, the Dutch national preventive mechanism, established in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and mentioned in paragraph 40 of the replies to the list of issues, comprised several bodies and was coordinated by the Security and Justice Inspectorate. Those bodies received an annual lump-sum budget for their activities under the preventive mechanism from the budget of the Inspectorate.

23. **Mr. van Andel** (Netherlands) said that there had been no known intercountry adoptions from El Salvador but that Dutch citizens had adopted children from 44 other countries. Adoption procedures complied with the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, to which the Netherlands was a party, and thus took the best interests of the child fully into consideration. The

principles of that Convention were incorporated into domestic legislation and the regulations of Dutch adoption agencies. The Netherlands cooperated with other countries in an effort to improve its adoption procedures and ensure respect for adoption law. There had been one reported case of an illegal adoption in 2006, when a child had been taken from an Indian children's home to the Netherlands; the Dutch Government had ordered investigations by three independent bodies, and criminal proceedings had been brought. An adoption could be revoked by a court decision at the adoptee's request once he or she had reached the age of 18 years. In 2011, the Netherlands had appointed Mr. Marc Dullaert Ombudsman for Children to promote and protect children's rights.

24. **Mr. Stevens** (Netherlands) said that the recommendation by the Human Rights Committee to reconsider the bill on administrative measures for national security would be addressed in the next report of the Netherlands to that Committee. As it stood, the bill contained no provisions relating to arbitrary detentions. The competence of the National Ombudsman extended to questions of enforced disappearances through the participation of that office in the national preventive mechanism.

25. **Mr. Berger** (Netherlands) said that Dutch legislation provided for declarations of legal presumption of death but not for declarations of absence. If a case of enforced disappearance arose, however, in which the results of the inquiry supported such a declaration and the family involved submitted such a request, it was conceivable that the prosecutor in charge could draft a declaration of absence. A specific fund existed for the payment of compensation to families and victims of enforced disappearances in cases of an absent perpetrator. A family's request for information on a detained person was fulfilled upon consent from that person. In the unlikely case that a person deprived of liberty did not wish to reveal his or her whereabouts or conditions of detention, the family would be referred to the detainee's lawyer.

26. The Code of Criminal Procedure provided for the examination of an anonymous witness before an investigating judge by means of a special procedure that was in full accordance with article 6 of the European Convention on Human Rights. The decision to accept the testimony of an anonymous witness was conditional upon a number of factors and was made on a case-by-case basis. To date, there had been no instances of the use of such testimony. In cases of enforced disappearance, the prosecution seldom had documentary evidence, let alone forensic evidence, which meant that it relied heavily on witness testimony in order to build its case, thus placing greater emphasis on the credibility of witnesses. Since a great deal of corroborating evidence was needed in order to accept the testimony of an anonymous witness, the use of such testimony made the prosecutor's task more difficult from a practical standpoint.

27. It was possible — though not a common practice — to restrict the access of a suspect being held in pretrial detention to his or her family members for the purposes of the investigation, but only during the initial phases of the investigation.

28. **Mr. Yakushiji** recalled that article 18, paragraph 1, of the Convention stipulated the minimum requirements pertaining to the types of information to be provided to persons with a legitimate interest in that information. He wished to know which of the items of information on that list were supplied by the State party. He asked whether an alleged victim could claim compensation by means other than criminal proceedings and whether any statutory limitations applied to such claims. He enquired as to whether it was possible under Dutch law to rely on diplomatic assurances in expelling, returning, surrendering or extraditing a person to another State. If that was the case, the delegation should provide information on the conditions under which such assurances could be used in cases in which there were reasonable grounds for believing that any of those acts would expose the person to the danger of being subjected to enforced disappearance or any other serious threat to his or her life or physical integrity.

29. He asked whether the State party intended to bring its national legislation into line with article 25 of the Convention, and in particular with paragraph 1 (a) thereof. He invited the delegation to comment on the most recent concluding observations of the Committee on the Rights of the Child (CRC/C/NLD/CO/3, paras. 67 and 68) and on civil society reports to the effect that in 2011 some 140 children had disappeared from centres for asylum seekers, leaving no trace of their whereabouts. He would like to know whether there had been any investigations into those cases and, if so, whether they had pointed to the direct or indirect involvement of State officials. He asked whether reception centres for asylum seekers were publicly operated and what efforts had been made to search for and identify those missing children.

30. **Mr. Huhle** asked how the State party determined what persons had a legitimate interest in the information that it was required to provide under article 18 of the Convention. He requested clarification of the statement made in paragraph 46 of the State party's replies to the list of issues, which indicated that all items of information listed in article 18 of the Convention were not automatically supplied to the detained person's relatives. It was essential that all authorities who were empowered to order a person's deprivation of liberty should have the duty to inform the detained person's family or other persons designated by the detainee, about the detention, since a significant amount of time could elapse between the arrest and the hearing of a suspect.

31. **Mr. Garcé García y Santos** said that under the legislation that governed its functioning, the Netherlands Institute for Human Rights could be denied access to certain detention facilities for security reasons. He would appreciate having a description of those reasons.

32. **Mr. Hazan** said that the case of the homeless child from India, mentioned by Mr. van Andel, appeared to be a case of abduction by a private individual and not an enforced disappearance. If it had involved the State of India or any other foreign State and had been characterized as a case of enforced disappearance, he would like to know whether that fact would have changed the decision of the courts to uphold the wishes of the child at the expense of those of the biological parents. The delegation should answer that question with reference to its relevant legislation and case law.

33. **Mr. López Ortega** listed a number of cases that had been brought before the European Court of Human Rights against the Netherlands in relation to the treatment of persons admitted to psychiatric institutions and said that he would like to have a brief description of the legal safeguards that had been established in the national legislation to protect such persons. In particular, he wished to know whether limits had been set on the time such persons could be institutionalized; whether their situation was reviewed regularly by an independent authority; and whether national legislation was in conformity with the relevant provisions of the European Convention on Human Rights.

34. **Mr. Stevens** (Netherlands) said that the Ministry of Justice could grant an extradition request that was contingent upon certain guarantees, such as the name of the prison in which the extradited person would be held upon arrival in the requesting country. An assessment was conducted jointly with the Ministry of Foreign Affairs of the risks to which the person would be subjected, and any determination to the effect that there was a risk that the person would be subjected to enforced disappearance constituted grounds for refusal of the extradition.

35. It was possible to sue for compensation in the context of criminal proceedings; however, that did not preclude a person from bringing a claim for compensation before a civil court. A separate procedure was provided for by law to handle the applications of unaccompanied minors who were seeking asylum; the law also provided for their reception in State-run centres designed specifically to accommodate them. The majority of the 140

cases of children who had disappeared could be explained by the fact that when minors reached the age of adulthood, they were free to leave the reception facility. The only way to prevent them from doing so was to detain them, an action for which there was no legal justification. If it was suspected that a minor had been a victim of trafficking, he or she was placed in a special reception centre that provided a higher level of supervision, but even those centres were not detention facilities. There had not been any reports of children missing from those centres. The police and the Public Prosecution Service were notified of all cases of persons leaving a reception centre, including minors, who had been victims of trafficking, following which an investigation into such allegations was initiated promptly. The prevention of trafficking in persons was one of the top priorities of the Public Prosecution Service.

36. International monitoring bodies could not be denied access to detention centres for security reasons, and he was not aware of any cases in which such access had been refused. Orders for placement in a psychiatric hospital were governed by law, enforced by the court and subject to annual review by a judge in order to continue the placement. Psychiatric hospitals were under the supervision of the Health-Care Inspectorate, which was an independent body with full investigative powers to inspect organizations involved in the provision of health care.

37. **Mr. Berger** (Netherlands) said that the acts enumerated in article 25, paragraph 1, of the Convention were fully covered under the criminal law of the Netherlands, and he provided examples of the various provisions of the Criminal Code that could be invoked in order to prosecute them. The public prosecutor had full access to information concerning the arrest or detention in police custody of criminal suspects. He was automatically informed of all deprivations of liberty, and if such information was not provided, he could request it or, if necessary, order it.

38. Persons with a legitimate interest, such as family members, were not automatically informed about the detention of their relative. That fact did not, however, prevent those who had a legitimate interest in obtaining such information from requesting it. Such a policy was in accordance with the balancing of interests he had referred to previously. The Convention and its provisions, including article 18, were directly applicable; however, such matters were ultimately the province of the courts.

39. The staff of the Public Prosecution Service involved in investigating and prosecuting international crimes received training in such areas as witness examination and protection. The police team that dealt with offences involving human trafficking also received training in witness protection.

40. **Mr. Steveas** (Netherlands) said that basic training for military personnel stationed abroad included a human rights component, in addition to courses in the specific field relating to their mission. If their mission involved detention, they received training that covered the issue of enforced disappearance. The international operations of the Dutch military were carried out in accordance with agreements signed with the host country that covered, inter alia, the conditions and supervision of detention of persons apprehended by Dutch troops.

41. **Mr. van Andel** (Netherlands) said that the Government had no knowledge of an adoption in the Netherlands that had originated in an enforced disappearance. In the event of such a case, an investigation would be conducted and the matter would be followed closely by the Government. The best interests of the child were paramount in decisions concerning intercountry adoptions.

42. **Mr. Yakushiji** thanked the members of the delegation for their frank and informative answers to the questions posed by Committee members.

43. **Mr. Stevens** (Netherlands) said that the open and constructive dialogue with the Committee would enable the Government to gain fresh insight into how it could improve its approach to implementing the Convention.

The meeting rose at 1 p.m.